

RSPA PREEMPTION DETERMINATION APPLICATIONS

March 1, 2005

Docket Number Filing Date Applicant	Subject Summary	Ruling Status	Disposition
PDA-1(R) (14602) 7/17/91 National Solid Wastes Management Assn.	MA, MD, & PA hazardous waste vehicle bonding requirements State bonding requirements for vehicles transporting hazardous wastes are <u>not preempted</u> under the "obstacle" test.	PD-1(R) Closed	Public Notice: 8/12/91 (56 FR 38294). Decision: 12/11/92 (57 FR 58848). Action on Petition for Reconsideration: 6/9/93 (58 FR 32418). Judicial review dismissed in <u>Massachusetts v. U.S. Dept. of</u> <u>Transportation</u> , Civil Action No. 93-1581 (HHG) (D.D.C. April 7, 1995), <u>reversed</u> 93 F.3d 890 (D.C. Cir. 1996), <u>petition for rehearing and rehearing en</u> <u>banc denied</u> (Nov. 6, 1996).
PDA-2(R) (14655) 11/25/91 1/3/92 National Tank Truck Carriers, Inc.	Mass. requirement for back-up alarm on tank trucks carrying flammable liquids State tank truck back-up alarm requirement applicable only to in-state transportation is <u>not</u> <u>preempted</u> under the "obstacle" test.	PD-5(R) Closed	Public Notice: 3/23/92 (57 FR 10098). Decision: 11/29/93 (58 FR 62707).
PDA-3(RF) 12/19/91 Chemical Waste Transportation Institute	City of Chester, WV hazardous waste transportation requirements Application dismissed because Ordinance regarding transportation of hazardous waste never went into effect.	N/A Closed	Public Notice: 4/6/92 (57 FR 11654). Dismissed: 2/2/94 (59 FR 4962).
PDA-4(F) (14612) 12/1/91 Oregon Dept. Of Energy	Washington RAM highway routing restrictions State restrictions on locations where trucks hauling RAM may enter the State are	PD-3 (F) Closed	Public Notice: 4/30/92 (57 FR 18537). Decision: 6/3/93 (58 FR 31580).

Docket Number Filing Date Applicant	Subject Summary	Ruling Status	Disposition
	<u>preempted</u> , under "dual compliance" and "obstacle" tests.		
PDA-5(R) (14609) 6/12/92 Chemical Waste Transportation Institute	Illinois EPA hazardous waste manifest State hazardous waste manifest requirements are <u>preempted</u> , under the "substantively the same" test.	PD-2 (R) Closed	Public Notices: 7/21/92 (57 FR 32360), 9/25/92 (57 FR 44402). Decision: 2/23/93 (58 FR 11176).
PDA-6(R) (14619) 7/27/92 Nalco Chemical Company	California statute and regulations re flammable and combustible liquids transportation State annual inspection requirement which causes delay is <u>preempted</u> under the "obstacle" test; marking requirements are <u>preempted</u> because "not substantively the same" as requirements in the HMR; annual registration is <u>not preempted</u> .	PD-4 (R) Closed	Public Notice: 8/21/92 (57 FR 38081). Decision: 9/20/93 (58 FR 48933). Action on Petition for Reconsideration: 2/15/95 (60 FR 8800).
PDA-7(R) (4952 & 7486) 12/31/92 HASA, Inc.	Los Angeles County regulations re permit fee, loading, unloading and storage requirements for tank cars containing chlorine. County provisions prohibiting a tank car from remaining on a siding at point of delivery, connected, for more than 24 hours and requiring attendance during tank car unloading <u>preempted</u> as not "substantively the same" as HMR. County fee on hazmat unloading <u>preempted</u> because not used for transportation-related	PD-9(R) Open	Public Notices: 1/26/93 (58 FR 6170), 10/14/93 (58 FR 53239). Decision: 2/15/95 (60 FR 8783), combined with PD-8, 10 & 11 (R) [PDA 9-11]. Action on Petitions to Reconsider deferred pending rulemaking on Applicability of the Hazardous Materials Regulations (Docket HM-223); final rule in HM-223 issued 10/30/03 (68 FR 61906), delay of effective date, 5/28/04 (69 FR 30588); 14 appeals of

Docket Number Filing Date Applicant	Subject Summary	Ruling Status	Disposition
	purposes. County prohibition on on-site storage in tank cars, requirement to unload tank car only to atmospheric or portable tank <u>not preempted</u> as not within reach of HMR. County permit requirement to report information <u>not preempted</u> because authorized by another Federal law.		final rule received, and petition for review filed (No. 03-1456, D.C. Cir.). One petition for reconsideration (of six) withdrawn and complaint for judicial review dismissed without prejudice, 5/7/02 (Civil Action No. 00-1312 (WBB)).
PD-8(R) (4952 ## 216-224 & 7486 ## 16-24) 1/5/93 Chemical Waste Transportation Institute	Michigan statute and regulations re marking of hazardous and liquid industrial waste-carrying motor vehicles State truck marking requirements different from HMR are <u>preempted</u> under "substantively the same" test for trucks carrying hazardous materials and are <u>preempted</u> under "obstacle" test for trucks not carrying hazardous materials.	PD-6(R) Closed	Public Notice: 1/26/93 (58 FR 6176). Decision: 2/9/94 (59 FR 6186).
PD-9(R) (4952 & 7486) 1/26/93 Swimming Pool Chemical Manufacturers Assn. (SPCMA)	California statute re storage and handling of hazardous materials State law imposing information reporting requirements (hazmat inventories, business plans, risk management plans) on handlers of hazmat <u>not preempted</u> because authorized by another Federal law.	PD-8(R) Open	Public Notices: 2/12/93 (58 FR 8494), 10/14/93 (58 FR 53239). Decision: 2/15/95 (60 FR 8778), combined with PD-9-11(R) [PDA-7, 10, 11]. Action on Petitions to Reconsider - see PD-9(R) [PDA-7(R)].
PD-10(R) (4952 & 7486) 1/26/93	Los Angeles County regulations re transportation of cryogenic liquids County requirements for labeling, name-	PD-10(R) Open	Public Notices: 2/12/93 (58 FR 8480), 10/14/93 (58 FR 53239). Decision: 2/15/95 (60 FR 8790), combined with

Docket Number Filing Date Applicant	Subject Summary	Ruling Status	Disposition
Swimming Pool Chemical Manufacturers Assn. (SPCMA)	plating, and placarding hazmat stored on-site; for safety equipment for motor vehicles moving hazmat within a facility; and for on-site storage, transportation and handling of cryogenic fluids <u>not preempted</u> as not within reach of HMR.		PD8, 9 & 11(R) [PDA-8, 9 & 11]. Action on Petitions to Reconsider - see PD-9(R) [PDA-7(R)].
PD-11(R) (4952 & 7486) 1/26/93 Swimming Pool Chemical Manufacturers Assn. (SPCMA)	Los Angeles County regulations re loading, and unloading and storage of compressed gases County permit provisions implementing State information reporting requirements <u>not</u> <u>preempted</u> because authorized by another Federal law.	PD-11(R) Open	Public Notices: 2/12/93 (58 FR 8488), 10/14/93 (58 FR 53239). Decision: 2/15/95 (60 FR 8793), combined with PD- 8-10(R) [PDA 7, 9 & 10]. Action on Petitions to Reconsider - see PD-9(R) [PDA-7(R)].
PDA-12(R) (14666) 4/16/93 Chemical Waste Transportation Institute and the National Tank Truck Carriers, Inc.	Maryland regulations re hazardous materials drivers' training and certification requirements Training and certification requirements for motor vehicle operators loading or unloading oil or hazardous substances, which exceeded Federal training requirements are <u>preempted</u> as applied to non-resident drivers and <u>not</u> <u>preempted</u> as applied to resident drivers.	PD-7(R) Closed	Public Notice: 5/19/93 (58 FR 29322). Decision: 6/3/94 (59 FR 28913). Action on Petition for Reconsideration: 2/24/95 (60 FR 10419).
PDA-13(R) (14670) 9/27/93 Chemical Waste Transportation Institute	New York regulations re transfer and interim storage of hazardous waste State regulations prohibiting repackaging hazardous waste and requiring additional information on the manifest are <u>preempted</u> . No	PD-12(R) Closed	Public Notices: 10/15/93 (58 FR 53614); 12/13/93 (58 FR 65226); 1/31/94 (59 FR 4312). Decision: 12/6/95 (60 FR 62527). Action on Petition for Reconsideration: 4/3/97 (6

Docket Number Filing Date Applicant	Subject Summary	Ruling Status	Disposition
	determination whether requirement for secondary containment at transfer facilities is preempted.		FR 15970), Judicial review dismissed, <u>New York v. U.S. Dept. of Transportation</u> , 37 F. Supp.2d 152 (N.D.N.Y. 1999).
PDA-14(R) 12/10/95 National Tank Truck Carriers, Inc.	City of El Paso, TX Municipal Code provisions requiring hazmat tank truck permits based on inspections held during limited time periods Application withdrawn and docket closed because City of El Paso passed ordinance that deleted hazmat truck permit requirement.	N/A Closed	Public Notice: 1/19/96 (61 FR 1432). Public Notice Closing Docket: 3/21/96 (61 FR 11677).
PDA-15(R) (14614) 3/4/96 Association of Waste Hazardous Materials Transporters	City of Houston, TX, Fire Code re tank truck requirements, inspections, fees and definition of hazardous material Fire Code requirements are <u>not</u> preempted because they do not apply to transportation subject to the HMR.	PD-14(R) Closed	Public Notices: 3/20/96 (61 FR 11463), 4/9/97 (62 FR 17281). Decision: 12/7/98 (63 FR 67506). Action on Petition for Reconsideration: 6/24/99 (64 FR 33949).
PDA-16(R) (2581) 4/8/97 New York Propane Gas Association	Nassau County, NY requirements for permits and certificates of fitness for delivery of LPG, including fees and inspections. Permit requirement is <u>preempted</u> with respect to trucks based outside of Nassau County, because annual inspection causes unnecessary delay in transportation of HM. Certificate of fitness requirement is <u>preempted</u> as applied to motor vehicle driver as additional training requirement.	PD-13(R) Closed	Public Notice: 6/10/97 (62 FR 31661). Decision: 8/25/98 (63 FR 45283). Action on Petition for Reconsideration, 10/10/00 (65 FR 60238). Judicial review dismissed, <u>The Office of the Fire Marshal of the County of Nassau v. U.S. Dept. of Transportation</u> , Civil Action No. 00-7200 (E.D. N.Y. Mar. 18, 2002).

Docket Number Filing Date Applicant	Subject Summary	Ruling Status	Disposition
PDA-17(R) (2968) 5/12/97 William E. Comley, Inc. & TWC Corporation	Public Utilities Commission of Ohio requirement for transportation of PG III hypochlorite solution in DOT-spec cargo tank Written requirements of the State of Ohio are consistent with the HMR, and there is no evidence that PUCO applies or enforces a general requirement for the use of a DOT specification cargo tank motor vehicle to transport hypochlorite with less than 16% available chlorine.	PD-15(R) Closed	Public Notice: 10/10/97 (62 FR 53049). Decision: 3/29/99 (64 FR 14965). Action on Petition for Reconsideration: 8/13/99 (64 FR 44265). Complaint for judicial review dismissed, <u>William E. Comley, Inc. v. U.S. Dept. of Transportation</u> , Civil No. C-1-99-880 (S.D. Ohio, June 6, 2000); appeal dismissed, No. 00-3860 (6th Cir. July 12, 2000).
PDA-18(R) (3577) 3/4/98 Association of Waste Hazardous Materials Transporters	Broward County, FL hazardous materials transportation requirements pertaining to the definition of hazardous material, release reporting, standards for packaging, fees, monthly reporting and vehicle inspection. The following requirements are <u>preempted</u> : (1) certain hazardous materials definitions and all requirements that rely on those definitions, (2) written notification of a hazardous materials release, (3) shipping paper retention for certain hazardous materials transporters, (4) licensing fees for hazardous waste transporters, and (5) monthly transportation activity reporting. The following requirements are <u>not preempted</u> : (1) requirements for oral notification of a hazardous materials release, (2) packaging standards for hazardous waste transport	PD-18(R) Closed	Public Notices: 8/6/98 (63 FR 42098), 11/2/99 (64 FR 59231). Decision: 12/27/00 (65 FR 81950). Action on Petition for Reconsideration: 5/17/02 (67 FR 35193).

Docket Number Filing Date Applicant	Subject Summary	Ruling Status	Disposition
	vehicles, (3) shipping paper retention for hazardous waste transporters, (4) periodic vehicle inspection and (5) vehicle marking.		
PDA-19(R) (3599) 3/9/98 National Tank Truck Carriers, Inc.	New York regulations on test reports and marking of gasoline transport vehicles N/A	Open	Public Notice: 6/2/98 (63 FR 30032); comment period expired: 8/31/98. Drafting of decision delayed by extensive discussions with EPA, complexity of the issues involved, litigation, and other preemption matters. Decision expected by 5/15/05.
PDA-20 RF (3579) 3/2/98 Association of Waste Hazardous Materials Transporters	Cleveland, Ohio permit and other requirements for transportation of explosives and other hazardous materials within the City The following requirements are <u>preempted</u> as an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR: (1) day-of-week and time-of-day restrictions in Downtown Area, with respect to radiopharmaceuticals only; (2) advance notification, routing, and escort for pickup or delivery of explosives; and (3) separation distance between vehicles transporting explosives or other hazardous materials	PD-20(RF) Closed	Public Notices: 9/17/98 (63 FR 49804); 6/30/99 (64 FR 35239). Decision: 6/1/01 (66 FR 29867).
PDA-21(R) (3665)	Tennessee annual remedial action fee and written incident reporting requirements	PD-21(R)	Public Notices: 4/9/98 (63 FR 17479), 4/16/98 (63 FR 18964). Decision: 10/6/99 (64 FR 54474).

Docket Number Filing Date Applicant	Subject Summary	Ruling Status	Disposition
3/23/98 Association of Waste Hazardous Materials Transporters	Annual remedial action fee is <u>preempted</u> because it is not fair and not used for purposes related to transportation of hazardous material. Written incident reporting requirement is <u>preempted</u> because it is not substantively the same as HMR requirement.	Closed	Complaint for judicial review, <u>Tennessee v. U.S. Dept. of Transportation</u> , filed Dec. 3, 1999; order denying claim of state sovereignty, C.A.No. C-3-99-1126 (M.D. Tenn. Feb. 27, 2001); affirmed and remanded, 326 F.3d 729 (6 th Cir. 2003); cert. denied, 11/3/03 (124 S. Ct. 464); judgment in favor of DOT and AWHMT (6/28/04).
PDA-22(R) (7092) 1/18/00 American Trucking Associations	New Mexico statutory and regulatory provisions applicable to transporters of liquefied petroleum gas. The following requirements are <u>preempted</u> : (1) annual cargo tank inspection requirements as applied to vehicles based outside the state because the requirements cause unnecessary delay in hazardous materials transportation; (2) employee examination and identification card requirements as applied to non-domiciled LP-gas personnel because the HMR prohibit States from applying additional training requirements to drivers domiciled outside the state; (3) LP gas transporter license fee because the fee is neither fair nor used for hazardous materials transportation purposes.	PD-22(R) Closed	Public Notice: 3/31/00 (65 FR 17335). Decision: 9/20/02 (67 FR 59396). Action on Petition for Reconsideration: 9/22/03 (68 FR 55080)
PDA-23(RF) (7021) 12/30/99	Morrisville, PA requirements for transporting "dangerous waste," including routing restrictions and manifest requirement.	PD-23(RF)	Public Notice: 4/14/00 (65 FR 20258). Decision: 7/17/01 (66 FR 37260).

Docket Number Filing Date Applicant	Subject Summary	Ruling Status	Disposition
Med/Waste, Inc. & Sanford Motors, Inc.	Definitions of "infectious waste," "hospital waste," and "dangerous waste"; routing limitation; and requirement for manifest are <u>preempted</u> .	Closed	Action on petition for reconsideration: 1/22/02 (67 FR 2948).
PDA-24(R) (7126) 2/28/00 Institute of Makers of Explosives	New Jersey prohibition against transporting blasting caps on the same motor vehicle with more than 5,000 lbs. of other commercial explosives Prohibition against transporting blasting caps on the same motor vehicle with more than 5,000 lbs. of other commercial explosives is <u>preempted</u> when applied to transportation on a public road or during activities that are incidental to the movement of property and involved a safety aspect of transportation on a public road.	PD-24(R) Closed	Public Notice: 4/7/00 (65 FR 18422). Decision: 6/8/01 (66 FR 30985).
PDA-25(R) (7740) 6/28/00 The Kiesel Company	Missouri prohibition of recontainerization of hazardous waste at transfer facility Prohibition against recontainerization is <u>preempted</u> because it is not substantively the same as packing requirements in the HMR.	PD-25(R) Closed	Public Notices: 8/14/00 (65 FR 49633); 12/11/00 (65 FR 77417). Decision: 7/16/01 (66 FR 37089).
PDA-26(R) (8026) 8/16/00 Boston & Maine	Massachusetts definition (designations) of hazardous materials	Open	Public Notices: 11/16/00 (65 FR 69365); 12/19/00 (65 FR 79458); 2/02/01 (66 FR 8845), 5/30/01 (66 FR 29376); comment period expired: 6/12/01. Drafting of decision delayed by other priority work.

Docket Number Filing Date Applicant	Subject Summary	Ruling Status	Disposition
Corporation			Decision expected by 5/30/05.
PDA-27(R) (7906) 8/30/00 ATOFINA Chemicals, Inc.	Louisiana requirements for hazardous materials incident notification Immediate telephone notification requirement is <u>not preempted</u> ; written reporting requirement is <u>preempted</u> .	Closed	Public Notice: 10/17/00 (65 FR 61370); comment period expired: 1/16/01. Decision: 11/30/04 (69 FR 68677).
PDA-28(R) (10293) 5/31/01 Town of Smithtown, New York	Town requirements for permits and certificates of fitness for delivery of LPG, including fees and inspections. Permit requirement is <u>preempted</u> with respect to trucks based outside of the Town of Smithtown, because annual inspection causes unnecessary delay in transportation of HM. Certificate of fitness requirement is <u>preempted</u> as applied to motor vehicle driver as additional training requirement.	PD-28(R) Closed	Public Notice: 8/9/01 (66 FR 41931). Decision: 3/29/02 (67 FR 15276)
PDA-29(R) (13481) 8/30/02 Medical Waste Institute	Massachusetts regulations on storage and disposal of infectious or physically dangerous medical or biological waste. Different requirements for packaging medical waste for transportation in commerce, labeling requirements, and contents and retention of manifest are <u>preempted</u> . Requirements that generator prepare and sign a shipping paper are <u>not preempted</u> to the extent that they are applied	PD-29(R) Closed	Public Notice: 12/12/02 (67 FR 76444). Decision: 6/22/04 (69 FR 34715)

Docket Number Filing Date Applicant	Subject Summary	Ruling Status	Disposition
	and enforced in the same manner as the HMR.		
PDA-30(R) (16456) 10/15/03 Société Air France	Houston, Texas Fire Code requirements on in-transit storage at airport, including requirements to submit a hazardous materials management plan and hazardous materials inventory statement to obtain a permit and to store certain hazardous materials in storage cabinets.	Open	Public Notice: 11/13/03 (68 FR 64413); comment period expired 2/11/04. Drafting of decision delayed by other priority work, including other preemption decisions. Decision expected by 6/15/05.